U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: SEP 09 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt who was found by a consular officer to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge (OIC) found that based on the evidence in the record, the discretionary factors pertaining to the hardships of the applicant's spouse do not outweigh the seriousness of the applicant's lack of respect for the law. The application was denied accordingly. *Decision of the Officer in Charge,* dated October 16, 2002.

On appeal, counsel asserts that the applicant has proven good faith, now has a United States citizen child and demonstrates economic and emotional hardship. Counsel further contends that the application demonstrates cumulative elements gathered to constitute an extreme hardship. *Letter to the BIA Board of Appeals*, undated.

The record contains several pages of documents written in the Egyptian language; a copy of a letter verifying the employment of the applicant's spouse, dated May 16, 2002; a copy of a letter from a minister at the applicant's church in Texas; letters of support; copies of articles addressing country conditions in Egypt and a letter from the applicant's spouse. The entire record was reviewed and considered in rendering a decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States on or about November 13, 1996 on a fiancé visa with authorization to remain until February 12, 1997. The applicant overstayed the period authorized by his visa and failed to marry the individual who filed the petition on his behalf. On March 10, 1999, the applicant was granted voluntary departure by an Immigration Judge. On September 1, 1999, a warrant of removal was issued on the applicant. On April 9, 2002, the applicant was removed from the United States at government expense. The applicant, therefore, accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until he was removed from the country on April 9, 2002. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Counsel states that the applicant is eligible for waiver under section 212(i) of the Act. *To The BIA Board of Appeals*, undated. The AAO notes that section 212(i) waiver proceedings are applicable to aliens who have violated section 212(a)(6)(C) of the Act. The applicant, however, violated section 212(a)(9)(B)(i) of the Act as discussed above and therefore, is eligible for waiver under section 212(a)(9)(B)(v) of the Act. Counsel further states that section 212(i) of the Act requires an alien to establish extreme hardship to his or her United States citizen or permanent resident alien spouse, son, or daughter in order to qualify for a waiver of inadmissibility. *Id.* The AAO notes that sections 212(a)(9)(B)(v) and 212(i) of the Act do not classify the "son or daughter" of an applicant as a qualifying relative; sections 212(a)(9)(B)(v) and 212(i) of the Act limit consideration of extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant as indicated above. The AAO notes that, in general, the assertions of counsel are stated unclearly.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's wife faces extreme hardship as a result of relocating to Egypt in order to remain with the applicant. Counsel states that the applicant's spouse is unable to work in Egypt and fears for her safety and the safety of the couple's child as a result of Anti-American sentiment in the applicant's home

country. *Letter from Stacy Fahmy*, undated ("It literally feels like I am in jail and everything I want or need someone have [sic] to do it for me."). *See also "In Egypt, U.S. strategy fuels anti-American attitudes"* from FreeRepublic.com, printed on June 22, 2003. Counsel indicates that the applicant's spouse is unable to practice her religion in the language she understands. *To The BIA Board of Appeals*. The record reflects that the applicant's wife is unable to adequately care for herself and for her son therefore establishing extreme hardship to her if she remains in Egypt.

Counsel does not establish extreme hardship to the applicant's wife if she returns to the United States in order to secure employment, obtain access to adequate educational programs for her child and enjoy the protection of her civil rights. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel provides documentation to support the assertion that the applicant and his spouse regularly attended church in the United States, engaged in volunteer activities in this country and were generally involved in their community. *Id.* U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife would endure hardship as a result of separation from the applicant. However, her situation, if she returns to the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.